IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5495 of 2006
And
CRIMINAL MISC.APPLICATION No. 5498 of 2006

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAJAL SURESHKUMAR JAIN - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
Mr.Majeed Memon, senior counsel, with MR TS NANAVATI and Mr.Rahul Pandya for the Applicant
Mr.K.T.Dave,learned APP for Respondent-State

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 2/06/2006

CAV COMMON JUDGMENT

1. Rule. Mr.K.T.Dave,learned APP waives service of notice of Rule on behalf of the respondent – State of Gujarat.

2. The instant applications have been preferred by the applicant Sajal Sureshkumar Jain under Section 439 of the Code of Criminal Procedure, 1973, with a prayer for grant of temporary bail to the applicant for a period of 15 days, to enable him to attend the occasion of the marriage of his sister Aarti. The applicant alongwith others are in custody pending trial and is at present lodged in the Sabarmati Central Jail,Ahmedabad from 15.1.2004, in connection with alleged offences punishable under Sections 306,307,120-B and 114 registered vide F.I.R. being C.R.No.I-23 of 2004 of Naranpura Police Station and offences punishable under Sections 376(2)(g), 342, 328, 323, 324, 201, 212, 120-B and 114 of the IPC and under Section 66(1)(b) and Section 85(1)(3) of the Bombay Prohibition Act registered vide F.I.R. being C.R. No.I-2/2004 of Shahibaug Police Station.

3. The applicant had preferred applications for

temporary bail on the ground of the marriage of his sister Aarti before the Additional Sessions Judge, Court No.7, Ahmedabad which were registered as Criminal Misc. Application No.1117 of 2006 in Sessions Case No.53 of 2005 and Criminal Misc.Application No.1116 of 2006 in Sessions Case No.239 of 2005, and came to be rejected by a common order dated 16.5.2006. Thereafter, the applicant has preferred the present applications which have been heard and disposed of together by a common order.

4. For the sake of clarity, it is relevant to mention that prior to the rejection of the applications for temporary bail on the ground of the marriage of his sister by the Sessions Court, the applicant had filed other applications for the grant of bail, though not on the same ground, which were rejected by the Sessions Court and by this Court. It is not necessary to go into details of these applications except to mention that the applicant had filed Criminal Misc. Application No.3451 of 2006 with Criminal Misc.Application No.3452 of 2006 before this Court, which were rejected vide order dated 3.5.2006

(Coram: Akshay H.Mehta,J). This order was challenged by the applicant by way of SLP (Cri.) No.2463 of 2006 in the Supreme Court, which was dismissed vide order dated 15.5.2006.

5. In the present applications the applicant has stated that the marriage of his younger sister Aarti is to take place on 7.6.2006 and the religious ceremonies are to commence from 4.6.2006 and end on 10.6.2006. In support of this, copies of invitation cards have been annexed. As per the said invitation cards the engagement ceremony of Aarti with Deepak is scheduled on 4.6.2006 at Sahajahan Hall, Hotel Taj Palace, New Delhi. The Sangeet ceremony is scheduled to be held on 5th June,2006 at Kanishka Farms, Mehrauli Road, New Delhi. The wedding ceremony is to be performed on 7.6.2006 at the Convention Hall, Ashok Hotel, Chanakyapuri, New Delhi. Thereafter, the wedding reception is to be held on 10.6.2006 at S.K.Industries,Plot No.124, Malanpur Industrial Area, Gwalior. From the copies of the invitation cards it is seen that the wedding programme is spread out from 4.6.2006 to 10.6.2006 at different venues at New

Delhi and Gwalior.

6. The allegation against the applicant is that he, alongwith other accused persons committed gang-rape on the prosecutrix on the New Years' night intervening 31.12.2003 and 1.1.2004 at a Hotel in Ahmedabad. The FIR was lodged by the prosecutrix on the next day at about 7.45 A.M. At Shahibaug Police Station. The prosecutrix committed suicide on 7.1.2004 by hanging herself, leaving behind a suicide note which accused the applicant and others of having subjected her to gang-rape, the disgrace and humiliation caused by which incident led her to commit suicide.

7. I have heard Mr.Majeed Memon, learned senior counsel appearing with Mr.T.S.Nanavati and Mr.Rahul Pandya for the applicant and Mr.K.T.Dave, learned APP appearing for the State of Gujarat. Mr.Majeed Memon has submitted that the applicant is the only brother and has two sisters, one of whom is Aarti, who is getting married. He has urged that being the only brother, the presence of the applicant at his

sister's marriage is necessary and desirable since there are various religious ceremonies to be performed by him, being the only brother. He has further submitted that this auspicious occasion has come in the family after a long period of time, and purely on humanitarian and compassionate grounds, the prayer of the applicant to be released on temporary bail for 15 days with police escort, the expenses of which will be borne by the applicant,deserves to be allowed. Drawing the attention of this court to the orders of rejection of his prayer by the Sessions Court, he has argued that even though the humanitarian aspect of the situation was taken into consideration by the Court below, the prayer of the applicant was rejected. In certain other cases accused persons have been permitted to attend marriage and religious ceremonies under police escort. Therefore, the case of the applicant should be similarly dealt with. The family of the applicant belong to Delhi and it is but natural that the marriage ceremonies are taking place in Delhi and if the prayer of the applicant is allowed it would mean that he would be out of the State of Gujarat during

that period and would, therefore, not be in a position to either tamper with the evidence or influence or pressurise any witness, in case that is apprehended. Moreover, the examination-in-chief of the sister of the prosecutrix is over and cross-examination is taking place, which may take some time before completion. Further, it has been submitted that the applicant has already deposited his Passport and is not in a position to flee the country, and his only desire is to bless his sister Aarti at the time of her wedding. Mr.Memon has also placed on record the affidavit of Aarti, sister of the applicant, verified at New Delhi on 31.5.2006 regarding the factum of the marriage. It is stated in the affidavit that the Birth, Marriage and Death of the deponent are the only three important events in her life and her marriage would be incomplete without the presence of the applicant.

8. Mr.K.T.Dave, learned APP has opposed the prayer of the applicant for grant of temporary bail and has submitted that the presence of the applicant in the marriage of his sister is not indispensable, since

her parents are there to perform the necessary ceremonies. It is not as if the marriage of his sister cannot take place in the absence of the applicant and the prayer for temporary bail in order to attend the said marriage cannot be said to be made on any humanitarian ground.

9. A reply affidavit has been filed by learned APP and his arguments are based on the averments contained in the same. The learned APP has further argued that the applicant has approached this court at the last minute for the purpose of temporary bail and since the marriage of his sister is scheduled to be held on 7.6.2006, as alleged, the authorities are not in a position to verify the genuineness of the marriage, therefore, his prayer does not require acceptance. He has further argued that this court has rejected the bail applications being Criminal Misc.Applications No.3451/2006 and 3452/2006 vide order dated 3.5.2006 and the SLP against this order has been dismissed by the Supreme Court. There is an apprehension expressed by the prosecution that in the peculiar background of this case, tampering and

pressurising the witnesses cannot be ruled out. It is also possible that the applicant may abscond and this may have weighed with the Court while rejecting the applications for regular bail vide order dated 3.5.6002. There is no change in circumstances as far as the present applications for temporary bail are concerned as the above apprehension still holds good.

10. The learned APP has further submitted that the trial is at a very crucial stage and the sister of the prosecutrix, who is a most important and material witness, is being examined by the trial court and her evidence is still being recorded. In this view of the matter, there is a possibility of tampering with the evidence, which cannot be ruled out. It has further been argued that the present applications for temporary bail cannot be equated with the cases of other accused as they were granted temporary bail under police escort, since they were not to leave the State of Gujarat. In the present case, the marriage ceremonies are scheduled to be held on different dates from 4th to 10th June,2006, at different venues in New Delhi and Gwalior. The Police escort cannot be

properly and effectively given outside the State of Gujarat. Lastly, it has been submitted that the ground of the marriage of his sister was not taken at the time when the application for regular bail was preferred before this Court, which was rejected on 3rd May 2006. There being sufficient prima facie material against the applicant, the prayer of the applicant for grant of temporary bail to attend the marriage of his sister, outside the State of Gujarat deserves to be rejected.

11. I have carefully considered the submissions of Mr.Majeed Memon, learned senior counsel and Mr.K.T.Dave, learned APP and have gone through the material on record. A doubt has been expressed by Mr.K.T.Dave, learned APP about the factum of the marriage of the sister of the applicant taking place as stated in the applications, due to the paucity of time to verify the same. I am not going into any discussion regarding this aspect, since the copies of the invitation cards as well as affidavit of Aarti, sister of the applicant are on record.

12. It may be true that the applicant is the only brother and in normal circumstances, a brother's presence is desirable at the marriage of his sister. However, it cannot be lost sight of, that the applicant is facing serious charges. The trial is going on and the evidence of Vaishali, sister of the deceased prosecutrix is being recorded. An apprehension has been expressed that this witness may be pressurised and evidence may be tampered with at this stage. This apprehension has also been recorded in the order of this court (Coram: Akshay H.Mehta,J) dated 3.5.2006 and in the order of the Additional Sessions Judge,Ahmedabad dated 16.5.2006. There is no change in circumstances as far as the present applications are concerned except the ground of the marriage of the applicant's sister. This, itself, is not a ground on which this court is inclined to exercise its discretion in favour of the applicant, in granting his prayer for temporary bail. This court has already rejected his Application for regular bail vide order dated 3.5.2006 and SLP against this order has been dismissed by the Supreme Court. The ground realities remain the same.

13. Social obligations and family festivities such as weddings cannot be given precedence over and above other vital factors, since the applicant is not a free person and is in custody facing trial for grave and serious offences. In view of the fact that the wedding festivities are spread out from 4.6.2006 to 10.6.2006 at different places in New Delhi and Gwalior, the apprehensions expressed by the learned APP, in my considered view are not entirely unfounded. The marriage of the sister of the applicant can take place without his presence and it is not such an occasion for which the applicant should be released with police escort, outside the State of Gujarat, to attend the festivities in two different States.

14. Normal humanitarian considerations and compassion cannot prevail over other facts and circumstances,in a case such as the present one. From the material on record, there is a prima facie and reasonable ground to believe that the applicant is involved in the commission of the alleged offence.

15. Keeping in view the seriousness of the offences, the gravity of the charges, the fact that the trial is at a crucial stage, where evidence of the material witness is in the process of being recorded and the apprehension that the applicant may misuse the liberty granted to him, in my view, this is not a fit case for grant of bail as prayed for by the applicant. In this regard I am guided by the principles enunciated in **(2005) 8 SCC 21 (State of U.P. v. Amarmani Tripathi)**, which are relevant in the facts and circumstances of the case, are reproduced below:

> "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses

> or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

16. Since the trial is going on, I have refrained from entering into the merits of the case so as not to cause any prejudice to either of the parties. It is also made clear that no observation made by this court be construed as having any bearing on the merits of the case. The trial court will proceed in accordance with law, unaffected and uninfluenced by any observation contained in this order.

17. For the forgoing reasons, both these applications stand rejected. Rule is discharged in both the matters.

(Smt.Abhilasha Kumari,J)

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